

No. PD-0035-21

TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
5/19/2021
DEANA WILLIAMSON, CLERK

JERROD P. ROLAND,

Appellant

v.

THE STATE OF TEXAS,

Appellee

Appeal from Fort Bend County
No. 01-19-00752-CR

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

STACEY M. SOULE
State Prosecuting Attorney
Bar I.D. No. 24031632

P.O. Box 13046
Austin, Texas 78711
information@spa.texas.gov
512-463-1660 (Telephone)
512-463-5724 (Fax)

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IDENTITY OF JUDGE, PARTIES, AND COUNSEL

- * The parties to the trial court's judgment are the State of Texas and Appellant, Jerrod P. Roland.
- * The trial judge was the Honorable Sherman Hatton, Jr., Fort Bend County Court at Law No. 6.
- * Counsel for the State at trial were Craig Priesmeyer and Traci M. Bennett, 301 Jackson Street, Room 101, Richmond, Texas 77469.
- * Counsel for the State on appeal was Baldwin Chin, 301 Jackson Street, Room 101, Richmond, Texas 77469.
- * Counsel for the State before the Court of Criminal Appeals is Stacey M. Soule, State Prosecuting Attorney, P.O. Box 13046, Austin, Texas 78711.
- * Counsel for Appellant at trial was James W. McCalla, P.O. Box 2108, Bellaire, Texas 77402.
- * Counsel for Appellant in all appellate proceedings is Patrick F. McCann, 700 Louisiana, Suite 3950 Houston, Texas 77002.

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STATE’S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

This Court could hold that some statutory county courts have concurrent jurisdiction with district courts over misdemeanor official misconduct cases by virtue of shared statutory original jurisdiction. Alternatively, consistent with precedent, this Court could conclude that TEX. CODE CRIM. PROC. art. 4.05’s clause granting district courts original jurisdiction over “all misdemeanors involving official misconduct”

really means all.

STATEMENT REGARDING ORAL ARGUMENT

The Court did not grant oral argument. Appellant has requested argument. If his request is granted, the SPA will also present argument to aid in this Court's decision-making.

But the SPA does not believe that argument is necessary, despite the significance of jurisdictional issues generally. First, the SPA does not oppose Appellant's arguments; she has not taken a position on the resolution of the issue. Instead, she has exhaustively briefed both positions. Further, given the exceedingly large volume of old and current constitutional, statutory law, and case law and ancillary issues that are discussed herein, argument may not lend itself to the level of detail required to fully appreciate all the complex textual nuances and interrelationships involved.

STATEMENT OF THE CASE

Appellant, due to misconduct committed as a Juvenile-Probation-Department employee, was charged with two Class A misdemeanor counts of official oppression in a county court at law; he was granted deferred adjudication community supervision for six months and fined \$100. 1 CR 11, 82-92. The court of appeals sustained Appellant's claim that the county court lacked subject-matter jurisdiction and thus

vacated and dismissed the trial court’s judgment. *Roland v. State*, 617 S.W.3d 52, 56 (Tex. App.—Houston [1st Dist.] 2020).

ISSUE PRESENTED

Does TEX. CODE CRIM. PROC. art. 4.07’s grant of “original jurisdiction of all misdemeanors” give county courts jurisdiction—concurrent with district courts—over official misconduct cases?

SUMMARY OF THE ARGUMENT

There are two ways to construe Texas’ criminal jurisdiction provisions in deciding whether statutory county courts have concurrent jurisdiction with district courts over misdemeanor official misconduct cases. One way is to compare the provisions’ grant of original jurisdiction with exclusive jurisdiction. In the past, district courts had exclusive jurisdiction over misdemeanor official misconduct cases. But that may have changed, arguably in 1925. Today, it may be said that no generally applicable constitutional or statutory provision grants either statutory county courts or district courts “exclusive” jurisdiction over such cases. It’s possible that original jurisdiction is given to both. If the original-versus-exclusive dichotomy is the controlling framework, then this Court could conclude that statutory county courts have concurrent jurisdiction unless a more specific law prohibits it.

The second way to analyze the issue is to construe TEX. CODE CRIM. PROC. art. 4.05’s “original [district court] jurisdiction in criminal cases . . . , of all misdemeanors

involving official misconduct” to mean literally all cases involving that subject. If “all” means all, then it operates to exclude misdemeanor official misconduct cases from the jurisdiction of any other court. This reading of Article 4.05 is supported by the construction philosophy that exclusivity flows from the naming of a specific subject (*i.e.*, misdemeanor official misconduct). If the Court holds that jurisdiction of such offenses belongs only to district courts, Appellant cannot be retried in district court because the statute of limitations was not tolled in the county courts at law.

ARGUMENT

1. Background: Appellant’s Official Misconduct Offenses and the Court of Appeals’ Decision that Statutory County Courts Lack Subject-Matter Jurisdiction over Official Misconduct Cases.

“Official misconduct” means “an offense that is an intentional or knowing violation of a law committed by a public servant while acting in an official capacity as a public servant.” TEX. CODE CRIM. PROC. art. 3.04(1).¹

Appellant was charged with two counts of Misdemeanor Class A Official

¹ “Public Servant” includes:
a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:
(A) an officer, employee, or agent of government;. . . .
TEX. PENAL CODE § 1.07(41); TEX. CODE CRIM. PROC. art. 3.04 (adopting Penal Code definition of public servant); *see also* TEX. LOC. GOV’T CODE § 87.011(3) (defining official misconduct for purposes of removal of a county official).

Oppression in Fort Bend County Court at Law No. 6. 1 CR 8, 29-35. Appellant moved to dismiss, arguing that the court lacked jurisdiction because only district courts have jurisdiction over official oppression offenses. 1 CR 29-35. The trial judge denied the request. 1 RR 24. After the trial court granted Appellant deferred adjudication community supervision, he appealed the denial of the jurisdictional challenge. *Roland*, 617 S.W.3d at 54-56. In resolving the point of error, the court of appeals reviewed a complicated web of jurisdictional constitutional and statutory provisions and court precedent discussed next.

Before 1985, TEX. CONST. Art. V, § 8 granted district courts “original jurisdiction” in, *inter alia*, all felony cases and misdemeanors involving official misconduct. S.J.R No. 14, §§ 4, 11, 69th Leg., R.S., 1985.² In accord with the Texas Constitution, TEX. CODE CRIM. PROC. art. 4.05 gave district courts and criminal district courts original jurisdiction in all felonies and misdemeanors involving official misconduct. Constitutional county courts, at the time, had “original jurisdiction” over all misdemeanors that were not exclusive to “Justices Court” and when the fine exceeded \$200. S.J.R No. 14, § 5, 69th Leg., R.S., 1985; TEX. CONST. Art. V, § 16.

In *Gallagher v. State*, this Court held that the penal offense of official oppression qualifies as “official misconduct” for purposes of the district-court-

² Available at https://lrl.texas.gov/scanned/sessionLaws/69-0/SJR_14.pdf.

jurisdiction constitutional and statutory provisions. 690 S.W.3d 587, 594 (Tex. Crim. App. 1985). The named subject-matter-controls doctrine was applied: “Where jurisdiction is given by the Constitution over cases involving designated kinds of subject matters, the grant is exclusive, unless a contrary intent is shown by the context.” *Id.* District courts therefore had exclusive jurisdiction over official misconduct prosecutions, and county courts at law were without jurisdiction. *Id.*

The 1985 amendment, by majority vote of Texas citizens in the general election, changed TEX. CONST. Art. V, § 8’s district-court jurisdiction by removing the “official misconduct” proviso: “District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, *except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.*” S.J.R No. 14, §§ 4, 11, 69th Leg., R.S., 1985 (emphasis added); TEX. GOV’T CODE § 24.007(a) (“The district court has the jurisdiction provided by Article V, § 8, of the Texas Constitution.”). TEX. CODE CRIM. PROC. art. 4.05 retained the “misdemeanor involving official misconduct” text: “District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, of all misdemeanors involving official misconduct[.]” S.J.R No. 14, §§ 4, 11, 69th Leg., R.S., 1985. And the Constitution gave constitutional county courts “jurisdiction as

provided by law.” S.J.R No. 14, § 5, 69th Leg., R.S., 1985.

County courts at law, like Fort Bend’s No. 6, were created by the Legislature under the authority of TEX. CONST. Art. V, § 1.³ TEX. GOV’T CODE § 21.009(2) (“‘Statutory county court’ means a county court created by the legislature under Article 5, Section 1, of the Texas Constitution[.]”). TEX. GOV’T CODE § 25.0003(a) grants statutory county courts jurisdiction “over all criminal causes and proceedings, civil and criminal, original and appellate, prescribed by law for [constitutional] county courts.”⁴

TEX. GOV’T CODE § 26.045, governing constitutional-county-court jurisdiction, specifically excludes misdemeanors involving official misconduct from the list of offenses from which it has exclusive jurisdiction. TEX. GOV’T CODE § 26.045(a) states, in part: “a county court has exclusive original jurisdiction of misdemeanors other than misdemeanors involving official misconduct and cases in which the highest fine that may be imposed is \$500 or less.” TEX. CODE CRIM. PROC. art. 4.07,

³ TEX. CONST. Art. V, § 1 states: “The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.”

⁴ See *Ex parte Schmidt*, 109 S.W.3d 480, 482 (Tex. Crim. App. 2003) (acknowledging that § 25.0003(a)’s reference to county court means constitutional county court); *Dailing v. State*, 546 S.W.3d 438, 445 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (same).

which also governs county-court⁵ jurisdiction does not mention official misconduct. Article 4.07 broadly states that “county courts” have “original jurisdiction of all misdemeanors of which original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed five hundred dollars.” This language, when previously included in TEX. CONST. Art. V, § 16, was held to include misdemeanors other than official misconduct. *Simpson v. State*, 137 S.W.2d 1035, 1037 (Tex. Crim. App. 1940, op. on reh’g) (quoting *Hatch v. State*, 10 Tex. App. 515, 518 (1881)).

a. The Lower-Court Split Emerges.

In *Campos v. State*, the Fourteenth Court of Appeals held that the 1985 constitutional amendment to district-court jurisdiction in TEX. CONST. Art. V, § 8 effectively superceded *Gallagher’s* exclusive-official-misconduct jurisdiction holding. 783 S.W.2d 7, 8-9 (Tex. App.—Houston [14th Dist.] 1989, pet. ref’d). It observed that district courts now have exclusive jurisdiction except when it has been conferred by “*other law on some court[.]*” *Id.* at 8 (emphasis added). “Other law,” the court asserted, includes TEX. CODE CRIM. PROC. art. 4.07, which grants county

⁵ Constitutional county courts and county courts at law have criminal jurisdiction. TEX. CODE CRIM. PROC. art. 4.01(6) (county courts), (7) (county courts at law with criminal jurisdiction). However, it is unclear whether 4.07 applies only to constitutional county courts, or if it also includes county courts at law. *Dailing*, 546 S.W.3d at 450 (presuming TEX. CODE CRIM. PROC. art. 4.07 applies to only constitutional county courts). As explained later, that issue does not need to be decided here.

courts jurisdiction over all misdemeanors (the exceptions being irrelevant). *Id.* Therefore, it announced that district and county courts now have concurrent jurisdiction over misdemeanors involving official misconduct. *Id.* at 8-9.

The First Court of Appeals in this case, after considering the foregoing, split with the Fourteenth Court and rejected *Campos'* interpretative significance of the 1985 TEX. CONST. Art. V, § 8 amendment. *Roland*, 617 S.W.3d at 56. Under TEX. GOV'T CODE § 26.045, it recognized, constitutional county courts do not have exclusive jurisdiction over misdemeanors involving official misconduct. *Id.* Further, TEX. CODE CRIM. PROC. art. 4.05 gives district courts and criminal district courts jurisdiction over all misdemeanors involving official misconduct. *Id.* at 55-56. Because official oppression is a form of official misconduct, the county-court-at-law judgment is void, and the trial court's judgment must be dismissed. *Id.* at 56.

Some clarification of the lower court's opinion is needed. Although the court considered TEX. GOV'T CODE § 26.054(a) to be generally applicable to statutory county courts, it is directly applicable to only constitutional county courts. *See Roland*, 617 S.W.3d at 55 ("Generally, county courts at law have exclusive original jurisdiction over misdemeanor offenses. *See* TEX. GOV'T CODE § 26.045(a)[.]"). TEX. GOV'T CODE §§ 25.0003 and 25.0812 directly control the statutory county-court aspect of this jurisdiction question. *See Dailing*, 546 S.W.3d at 452 (TEX. GOV'T

CODE § 25.1033, a local-jurisdiction statute, prevailed over § 26.054). County Court at Law No. 6 was created in January 2018.⁶ Acts 2017, 85th Leg., ch. 912 (S.B. 1329), § 3.01, eff. Jan. 1, 2018. Under TEX. GOV'T CODE § 25.0812, a Fort Bend County Court of Law has jurisdiction under TEX. GOV'T CODE § 25.0003 and “other law.”⁷

Next, even though TEX. GOV'T CODE §§ 25.0003 and 25.0812 control, TEX. GOV'T CODE § 26.054(a) is incorporated by reference in § 25.0003's reference to “[constitutional] county court,” giving Fort Bend County Court at Law No. 6 the same jurisdiction as constitutional county courts.⁸ Therefore, misdemeanor jurisdiction vested in Fort Bend County Court of Law No. 6 includes constitutional-county-court jurisdiction under § 25.0003 and that provided by “other law” under § 25.0812.

⁶ TEX. GOV'T CODE § 25.0811 provides: “Fort Bend County has the following statutory county courts: . . . (6) County Court at Law No. 6 of Fort Bend County.”

⁷ TEX. GOV'T CODE § 25.0812 came into effect in 1987. Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, eff. Sept. 1, 1987.

⁸ The Fort Bend County Attorney has no independent jurisdiction over criminal matters but may assist the District Attorney. TEX. GOV'T CODE § 45.179(e), (g).

2. Some County Courts at Law May Have Concurrent Jurisdiction with District Courts Over Misdemeanor Official Misconduct Cases.

By parsing the difference between original and exclusive jurisdiction, the applicable constitutional and statutory provisions may be construed to confer district and county courts at law (generally) with concurrent jurisdiction over misdemeanor official misconduct cases.

a. Standard for Constitutional and Statutory Construction.

Both constitutional and statutory provisions are construed according to their plain text unless such a construction would lead to an absurd result that was not possibly intended. *See Johnson v. Tenth Judicial District of Appeals at Waco*, 280 S.W.3d 866, 872 (Tex. Crim. App. 2008) (“when we construe a provision of the Texas Constitution, we are principally guided by the language of the provision itself as the best indicator of the intent of the framers who drafted it and the citizenry who adopted it.”); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991) (“When attempting to discern this collective legislative intent or purpose, we necessarily focus our attention on the literal text of the statute in question and attempt to discern the fair, objective meaning of that text at the time of its enactment.”).

b. Jurisdiction Over Misdemeanor Official Misconduct Precedent.

In 1985, this Court interpreted Article V, § 8 of the 1876 Texas Constitution

to demonstrate the intent to “relieve the district courts of the burden of handling all but the most important class of misdemeanors, which . . . in [the majority of the Constitutional Convention’s] opinion consisted of ‘official misconduct’ offenses.” *Gallagher*, 690 S.W.2d at 591. Two years later, another explanation, offered in the interpretive commentary to Article V, § 8, was repeated by Judge Clinton—“harmony of the system.” *Emerson v. State*, 727 S.W.2d 267, 270 (Tex. Crim. App. 1987) (Clinton, J., dissenting) (discussing *Watson v. State*, 9 Tex. App. 212, 214, 1880 WL 9132 (Tex. App. 1880)). That “harmony” was the interest in judicial economy. Vesting misdemeanor-official-misconduct jurisdiction in the district court⁹ made sense because the removal of county officers, which only a district court can effectuate,¹⁰ could be done in conjunction with a criminal judgment, thus eliminating the need to resort to a second tribunal. *Id.*; *id.* at 271 (Clinton, J., dissenting) (“jurisdiction was granted district courts because the consequence of conviction was removal from office—regardless of how ‘serious’ the offense was deemed to be.”).

⁹ District courts were given exclusive jurisdiction to protect county officials from “arbitrary removal without just cause.” *Emerson*, 727 S.W.2d at 269 (Clinton, J., dissenting).

¹⁰ TEX. CONST. Art. V, § 24 (removal for “incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury.”).

In *Hatch v. State*, this Court’s predecessor interpreted the original jurisdiction of district courts over misdemeanors involving official misconduct to mean exclusive jurisdiction. 10 Tex. App. at 518. The Constitution’s Article V, § 16, relating to county-court jurisdiction over misdemeanors, was read to cover “other misdemeanors” not involving official misconduct. *Id.* Nearly sixty-years later, that construction was upheld by this Court in *Simpson v. State*. 137 S.W.2d at 1037. Forty-five years later in *Gallagher*, this Court recognized the well-established rule and stated: “Where jurisdiction is given by the Constitution over cases involving designated kinds of subject matters, the grant is exclusive[.]” 690 S.W.3d at 594 (citing *Meyers v. State*, 105 S.W. 48, 50 (Tex. Civ. App. 1907)); *see also id.* at 592-93 (discussing cases applying the same construction). This district-court-exclusive-jurisdiction-over-official-misconduct-cases understanding was seemingly followed by courts until 1989, when the Fourteenth Court of Appeals in *Campos* recognized that the 1985 amendment to Article V, § 8 was a game changer. 783 S.W.2d at 8-9.

A review of the prior and current jurisdictional constitutional provisions discussed above may establish a conflict with the named subject-matter-controls doctrine of constitutional construction applied by this Court in *Hatch*, *Simpson*, and *Gallagher*. The original and exclusive jurisdiction dichotomy may be the dispositive category for purposes of subject-matter jurisdiction. *See, generally, Ex parte*

Wilbarger, 55 S.W. 968, 970-71 (Tex. Crim. App. 1900) (when constitutional exclusive jurisdiction is not given, the Legislature may invest concurrent jurisdiction in other courts). Our Constitution’s jurisdiction requirements, then and now, distinguish between original and exclusive jurisdiction:

<i>Pre-1985 Tex. Const. Art. V, § 16 Constitutional County Court Jurisdiction</i>	<i>Pre-1985 Tex. Const. Art. V, § 19 Justice of Peace Court Jurisdiction</i>	<i>Pre-1985 Tex. Const. Art. V, § 8 District Court Jurisdiction</i>	<i>Post-1985 Tex. Const. Art. V, § 19 Justice of Peace Court Jurisdiction</i>	<i>Post-1985 TEX. CONST. Art. V, § 8 District Court Jurisdiction</i>
<i>“original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed \$200[.]”</i>	<i>“jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and exclusive jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars or less . . .”</i>	<i>“original jurisdiction in all criminal cases of the grade of felony, in all suits on behalf of the State to recover penalties, . . .of all cases of divorce, of all misdemeanors involving official misconduct”</i>	<i>“original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law.”</i>	<i>“jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred on some other court,”</i>

Arguably, these provisions establish that original jurisdiction and exclusive jurisdiction should never be treated as synonymous. *See Ex parte Thomas*, __S.W.3d__, 2021 WL 1204352, at *3-7 (Tex. Crim. App. 2021, reh’g filed)

(discussing juvenile exclusive original jurisdiction and waiver). “Original” is not “exclusive” jurisdiction, and vice-versa. Therefore, the named-subject-matter-controls doctrine of construction applied in *Hatch* and carried forward in *Gallagher* may have been contrary to the plain text of the Constitution then and now. It is questionable whether the grant of constitutional original jurisdiction over a particular subject matter like official misconduct should have been construed to mean exclusive jurisdiction.

Fortunately, the Court does not need to reevaluate nearly ninety years of Texas constitutional case law to resolve the question under the current law. Article V, § 8 no longer expressly addresses the specific subject matter of “official misconduct.” Thus, the issue must be settled under the applicable statutes—which are nearly identical to the former constitutional provisions. As such, the historical development of those statutes helps to provide a full context to this question.

c. A Distinction With a Difference: Original Versus Exclusive Jurisdiction.

Like the constitutional provisions at play, the statutes also recognized a distinction between original and exclusive jurisdiction. Beginning in 1878, exclusive district-court jurisdiction over official misconduct cases was provided for by statute. Article 68 granted district courts exclusive jurisdiction over all felonies, TEX. CODE

CRIM. PROC. art. 68 (eff. July 24, 1879), while Article 70 granted district courts “exclusive original jurisdiction of misdemeanor cases involving official misconduct.” TEX. CODE CRIM. PROC. art. 70 (eff. July 24, 1879).¹¹ And Article 72 granted county courts “exclusive jurisdiction over all misdemeanors, except misdemeanors involving official misconduct[.]” TEX. CODE CRIM. PROC. art. 72 (eff. July 24, 1879).¹²

In 1925, the statutory exclusively provisions applicable to district courts were removed. District courts were granted “original jurisdiction in criminal cases of the grade of felony, and of all misdemeanors involving official misconduct.” TEX. CODE CRIM. PROC. art. 54 (eff. Sept. 1, 1925). County courts were granted “original jurisdiction of all misdemeanors of which exclusive jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed two hundred dollars.” TEX. CODE CRIM. PROC. art. 56 (eff. Sept. 1, 1925). Article 52-88 specifically referenced misdemeanor official misconduct: “The county courts shall have exclusive

¹¹ Available at: <https://www.sll.texas.gov/assets/pdf/historical-statutes/1879/1879-5-code-of-criminal-procedure-of-the-state-of-texas.pdf>.

¹² The foregoing Articles were renumbered in 1895 but the substance of the provisions remained the same. TEX. CODE CRIM. PROC. arts. 87 (district court felony jurisdiction), 89 (district court exclusive over misdemeanors), 91 (county courts excepted from misdemeanor jurisdiction). With no substantive changes, the Articles were renumbered again in the 1911 Code. TEX. CODE CRIM. PROC. arts. 88 (district court felony jurisdiction), 90 (district court exclusive over misdemeanors), 98 (county courts excepted from misdemeanor jurisdiction).

jurisdiction of all misdemeanors, except misdemeanors involving official misconduct[.]” TEX. CODE CRIM. PROC. art. 52-88 (eff. Sept. 1, 1925).¹³

Misdemeanor county-court jurisdiction changed again when the Code of Criminal Procedure was overhauled in 1965. Acts 1965, 59th Leg., ch. 722, eff. Jan. 1, 1966. Article 4.05’s district-court jurisdiction granted district courts and criminal district courts original jurisdiction in felony cases and “of all misdemeanors involving official misconduct.” Acts 1965, 59th Leg., ch. 722, eff. Jan. 1, 1966. Article 4.07 stated: “The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court[.]” Acts 1965, 59th Leg., ch. 722, eff. Jan. 1, 1966. The provision relating to county-court jurisdiction over official misconduct misdemeanors was moved to the Civil Statutes. TEX. REV. CIV. STAT. ART. 1960-1 (eff. Jan. 1, 1966) (noting saved from repeal by TEX. CODE CRIM. PROC. art. 54.02). Article 1960-1 of the Revised Civil Statutes stated: “county courts shall have exclusive jurisdiction of all misdemeanors, except misdemeanors involving official misconduct” TEX. REV. CIV. STAT. ART. 1960-1 (eff. Jan. 1, 1966).

With the exception of authorizing the transfer of cases to the district court,

¹³ Article 52-88 does not appear in the 1925 Code but does appear for the first time in the 1928 supplement. Articles 54, 56, and 52-88 remained intact in the 1948 Code of Criminal Procedure.

Article 4.05 has remained the same since 1966. Acts 1983, 68th Leg., p. 1585, ch. 303, § 5, eff. Jan. 1, 1984; *see also* TEX. GOV'T CODE § 24.007(a) (district courts have jurisdiction granted by Article V, § 8 of the Constitution). Article 4.07 has remained the same since 1966, with the exception of increasing the jurisdictional amount required to invoke county-court jurisdiction. Acts 1991, 72nd Leg., ch. 108, § 3, eff. Sept. 1, 1991. The constitutional county-court exclusion of exclusive misdemeanor jurisdiction over official misconduct cases was moved to the Government Code in 1985 and codified § 26.045. Again, as first enacted, § 26.045 stated: “a county court has exclusive original jurisdiction of misdemeanors other than misdemeanors involving official misconduct and cases in which the highest fine that may be imposed is \$200 or less.”¹⁴ Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Though the statute has been amended several times, this is the text, now placed in subsection (a), that matters here. *See* TEX. GOV'T CODE § 26.045(a) (“a county court has exclusive original jurisdiction of misdemeanors other than misdemeanors involving official misconduct and cases in which the highest fine that may be imposed is \$500 or less.”).

¹⁴ In 1987, the Legislature clarified that this applies to statutory county courts even when the county court is in a county with a criminal district court. Acts 1987, 70th Leg., 2nd C.S., ch. 45, § 1, eff. Oct. 20, 1987.

d. By Statute, District and *Some* Statutory County Courts May Have Concurrent Jurisdiction Over Official Misconduct Cases.

In this case, the subject-matter and punishment-subject-matter requirements could be construed to give Fort Bend County Court at Law No. 6 jurisdiction of the Appellant’s official misconduct cases.

i. Subject Matter Reconciliation.

None of the statutes use the key word “exclusive” to grant exclusive jurisdiction over misdemeanor official misconduct cases to either the county courts or district courts. But all possibly grant general *original* jurisdiction to both.

TEX. CODE CRIM. PROC. art. 4.05	TEX. CODE CRIM. PROC. art. 4.07	TEX. GOV’T CODE § 25.0003	TEX. GOV’T CODE § 26.045(a)
“District courts and criminal district courts shall have <i>original jurisdiction</i> in criminal cases of the grade of felony, <i>of all</i> misdemeanors involving official misconduct,”	The county courts shall have <i>original jurisdiction</i> of all misdemeanors of which exclusive original jurisdiction is not given to the justice court,”	“A <i>statutory county court</i> has <i>jurisdiction over all causes and proceedings</i> , civil and <i>criminal</i> , original and appellate, <i>prescribed by law for [constitutional] county courts.</i> ”	“a [constitutional] county court has <i>exclusive original jurisdiction</i> of misdemeanors <i>other than misdemeanors involving official misconduct</i> ”

Looking at § 26.045(a), included under the title “Original Criminal Jurisdiction,” it could be implied that exclusive jurisdiction over misdemeanors other than official misconduct cases means that the latter falls into those courts’ general, original jurisdiction. Also, in revisiting the text of Article 4.07, this Court could hold

that the limitation to impliedly exclude misdemeanor misconduct cases from that text in *Hatch, Simpson, and Gallagher*, 690 S.W.3d at 594, was incorrect. The rule would then be that, in cases in which a statutory county court’s jurisdiction includes that of a constitutional county court,¹⁵ the county court may share concurrent jurisdiction with district courts over misdemeanor official misconduct cases.

For purposes of subject matter, there is no irreconcilable conflict between TEX. GOV’T CODE §§ 25.0003 and 26.045 for misdemeanor official misconduct cases. In *Dailing v. State*, a majority of the Fourteenth Court of Appeals held that TEX. GOV’T CODE §§ 25.0003, 25.1033 (particular to Harris County Statutory Courts at Law), and 26.045 irreconcilably conflict. 546 S.W.3d at 450. The court reasoned that if § 26.045 grants exclusive jurisdiction over ordinary misdemeanors to constitutional county courts, statutory county courts cannot also share that same jurisdiction under §§ 25.0003 and 25.1033. *Id.* In other words, only one court can be the *exclusive*-jurisdiction court. *Id.* In resolving the conflict, the court held that the more specific and last-in-time Harris County statute (§ 25.1033) prevailed over § 26.045. *Id.* at 452. So, the Harris County Courts at Law, in having “criminal jurisdiction provided

¹⁵ Again, there may still be an issue of whether Article 4.07 applies directly to only constitutional county courts. *Dailing*, 546 S.W.3d at 450 (assuming TEX. CODE CRIM. PROC. art. 4.07 applies to only constitutional county courts). Again, that issue need not be addressed because of § 25.0003.

by law for [constitutional] county courts,” had “original jurisdiction over most misdemeanors” except in (1) official misconduct cases, and (2) those cases in which the fine cannot exceed \$500. *Id.*

This Court need not wade into *Dailing*’s irreconcilable conflict question because, if the foregoing reasoning is embraced, no court has “exclusive” jurisdiction over misdemeanor official misconduct cases. Section 26.045 excepts those cases from its exclusively clause, thus there is no exclusivity argument to be had. Everything here can be reconciled.

ii. Punishment Subject Matter Matters.

Statutory-county-court jurisdiction over misdemeanor official misconduct cases may be limited by TEX. GOV’T CODE § 25.0002(1)’s confinement clause with no fine amount. Section 25.0002(1) applies to statutory county courts and states: “‘Criminal law cases and proceedings’ includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year.” This clause applies to TEX. GOV’T CODE § 25.0003, which grants those courts jurisdiction “over all causes and proceedings, civil and criminal,” As shown below, § 25.0002(1) may not be consistent with the fine clauses in the county-court jurisdiction provisions in TEX. GOV’T CODE § 26.045(a) and TEX. CODE CRIM. PROC. art. 4.07. This is relevant because both statutes apply to county courts at law.

Statutory County Court Punishment Under TEX. GOV'T CODE § 25.0002(1)	Constitutional County Court Punishment Under TEX. GOV'T CODE § 26.045(a)	County Court Punishment Under TEX. CODE CRIM. PROC. art. 4.07
“‘Criminal law cases and proceedings’ includes cases and proceedings for allegations of <i>conduct punishable in part by confinement in the county jail not to exceed one year.</i> ”	“a county court has exclusive original jurisdiction of misdemeanors other than misdemeanors involving official misconduct and cases in which the <i>highest fine that may be imposed is \$500 or less.</i> ”	“The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when <i>the fine to be imposed shall exceed five hundred dollars.</i> ”

This potential conflict is yet another thorny issue that is the byproduct of a daunting array of jurisdictional statutes. Thankfully, any perceived conflict can be avoided in this case because the more specific statute (*i.e.*, § 25.0002(1)) controls over the general. *See* TEX. GOV'T CODE § 25.0001(a) (“If a provision of this subchapter conflicts with a specific provision for a particular court or county, the specific provision controls.”); *State v. Vasilas*, 253 S.W.3d 268, 272 (Tex. Crim. App. 2008) (a more specific statute will govern over a general one). Here, the specific provision is not contingent on a fine amount. And Appellant fits within its parameters. Appellant is on deferred community supervision for two Class A Misdemeanors; therefore, the punishment included a term of confinement not to exceed a year. TEX. PENAL CODE § 12.21.

A reconciliation between TEX. GOV'T CODE § 26.045(a)'s and TEX. CODE

CRIM. PROC. art. 4.07's differing fine amounts has been made. In *Rodriguez v. State*, the Eastland Court of Appeals observed that this Court's predecessor when interpreting prior versions in *Solon v. State*¹⁶ held that, under Article 4.07, a county court has concurrent jurisdiction in cases in which the applicable fine is less than Article 4.07's maximum threshold. 224 S.W.3d 783, 785-86 (Tex. App.—Eastland 2007). If necessary, the offenses here would qualify under the terms of Article 4.07.

e. Ancillary Rights and Authority to Consider.

Though *Campos* has been Fourteenth Court precedent since 1989, if this Court concludes that there is concurrent jurisdiction, it may be met with apprehension and skepticism. After all, most Texas Bar Exam takers can recall that the opposite rule was drilled into them during the months of arduous pre-exam study. It is therefore prudent to consider whether and what rights or authority of the parties will be tangibly impacted.

i. Will the litigants be forced to appear before a non-lawyer statutory-county-court judge?

No. Though constitutional county court judges do not need to be licensed to practice law,¹⁷ statutory county court judges do. TEX. GOV'T CODE § 25.0014(3)

¹⁶ 5 Tex. App. 301, 303 (1878).

¹⁷ Compare TEX. CONST. Art. V, § 7 (district court judges must be licensed to practice law in Texas), with TEX. CONST. Art. V, § 17 (county judge shall be “well

(statutory county court judge must be a licensed attorney who has practiced law or who has served as a judge in a Texas court for four years before being elected or appointed).

ii. Will the number of jurors differ?

No, in general. In county court, the number of jurors permitted is six. TEX. CONST. Art. V, § 17; TEX. GOV'T CODE § 62.301. When a misdemeanor is tried in district court, the number of jurors is also six. TEX. CODE CRIM. PROC. art. 33.01(b).

However, in Fort Bend County Courts at Law, the rule differs: “If a jury trial is requested in a case of concurrent jurisdiction between the district courts and the county courts at law, and the case was instituted in the district court, the jury shall be composed of 12 members.” TEX. GOV'T CODE § 25.0812(k).

iii. Will the practice and procedures differ?

Generally, no. Statutory county courts at law that have concurrent jurisdiction with district courts are governed by the latter's rules.

Practice in a statutory county court is that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, the drawing of jury panels, the selection of jurors, and all other matters pertaining to the conduct of trials and hearings in the statutory county courts that involve those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to the district courts in the county in which the statutory

informed of the law.”).

county court is located. This section does not affect local rules of administration adopted under Section 74.093.

TEX. GOV'T CODE § 25.0007(b).

iv. Will the admonishment given for a guilty or *nolo contendere* plea differ?

No. TEX. CODE CRIM. PROC. art. 26.13(a)(4) applies only to felony offenses.

v. Does the type of the prosecutor matter?

It shouldn't. Generally, the authority to initiate a prosecution lies with either the county or district attorney. TEX. CONST. Art. V, § 21 states:

The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature.

Typically, in counties where there is a district attorney, the district attorney has the authority to prosecute felony and misdemeanor official misconduct cases in district court.¹⁸ TEX. CODE CRIM. PROC. art. 2.01 ("Each district attorney shall represent the State in all criminal cases in the district courts of his district"); TEX. GOV'T CODE § 25.0010(b) (criminal district attorney shall serve statutory county court); *but see* TEX. GOV'T CODE §§ 43.134 (Hale County District Attorney represents the state

¹⁸ The term district attorney is intended to include criminal district attorneys. *See* TEX. GOV'T CODE § 44.001 (providing for the election of criminal district attorneys in certain counties).

in criminal cases in the county courts), 45.112 (Baylor County Attorney shall represent the state in all misdemeanor cases in district court), 45.290(a) (Rains County Attorney has duties of district attorneys). And in most misdemeanor official misconduct cases, the county attorney will represent the State in misdemeanor cases in the county court at law. TEX. CODE CRIM. PROC. art. 2.02; TEX. GOV'T CODE § 25.0010(b) (county attorney shall serve statutory county court); *but see* TEX. GOV'T CODE § 43.120(c) (El Paso County District Attorney shall represent the state in all criminal proceedings in inferior courts).

In some cases, the Attorney General may assist local prosecutors or have concurrent jurisdiction with local prosecutors. *See, e.g.*, TEX. CODE CRIM. PROC. art. 2.07 (appointment of assistant attorney general as attorney *pro tem*); TEX. GOV'T CODE § 402.028 (Attorney-General assistance to local prosecutors upon request); TEX. PENAL CODE § 39.015 (Attorney General, at the local prosecutor's request, can assist in prosecuting Chapter 30 Abuse of Office offenses); *Stephens v. State*, Nos. PD-1032-20 & PD-1033-20 (granted Oct. 29, 2020) (questioning whether and to what extent the Attorney General has independent authority to prosecute "election laws" violations). Likewise, the Special Prosecution Unit may also assist local prosecutors in prosecuting certain offenses. *See, generally*, TEX. GOV'T CODE §§ 41.301-41.310.

Although the authority of prosecuting attorneys who may initiate a prosecution

is as complicated as the subject-matter jurisdiction of Texas courts, it is clear that the Legislature treats many trial-level prosecutors as interchangeable, regardless of whether the case involves official misconduct. Therefore, the name of the prosecuting attorney who pursues a misdemeanor official misconduct prosecution is not a matter of qualification or competence.

vi. Will the ability to immediately remove county officers for official misconduct upon conviction be restricted if the case is tried in a statutory county court?

Yes, but there is a civil pre- and post-judgment remedy.¹⁹ Although the county-court judgment cannot also include an order of removal because the power of removal is assigned to district courts,²⁰ the county attorney can seek the removal through a civil proceeding in district court independent of a criminal prosecution. *See* TEX.

¹⁹ *See* TEX. CONST. Art. V, § 24 (county officers “may be removed by the Judges of the District Courts for . . . official misconduct . . . upon the cause therefor being set forth in writing and the finding of its truth by a jury”); *Watson*, 9 Tex. App. at 214 (“that upon conviction of a misdemeanor involving official misconduct a public evil should be remedied at once by the displacement of one unworthy of public trust, without the necessity of a resort to some other proceeding in another tribunal.”); TEX. LOC. GOV’T CODE § 87.001(3) (official misconduct for purposes of removal means “intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.”).

²⁰ *See* TEX. LOC. GOV’T CODE § 87.031(a), (b) (order for immediate removal of county officer must be made by the court rendering a judgment for felony or misdemeanor official misconduct).

LOC. GOV'T CODE §§ 87.013 (grounds for removal include official misconduct); 87.015 (petition for removal of county officers), 87.018 (jury trial in which the county attorney represents the State except in cases to remove the county or district attorney). A removal could be sought before or after a criminal prosecution. And though judicial economy may naturally favor proceeding in a district court on a misdemeanor official misconduct charge for purposes of removal,²¹ the law possibly leaves that to the discretion of the local prosecutors in most cases. But, as discussed next, that discretion is not an option in some county courts at law.

f. Rules Have Exceptions: Some Statutory County Courts Have Been Denied Misdemeanor Jurisdiction over Official Misconduct Cases.

Certain named statutory county courts cannot have concurrent jurisdiction over misdemeanor official misconduct cases because it has been denied by the Legislature.

Some examples include:

- Atascosa County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.0092(b)(2).
- Bowie County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.0212(b)(3).
- Calhoun County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.0312(b)(2).
- El Paso county courts at law are precluded from having jurisdiction. Tex. TEX. GOV'T CODE § 54.746(f).
- Hopkins County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.1142(b)(3).

²¹ See *Watson*, 9 Tex. App. at 214, *supra* at note 19.

- Hunt County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.1182(b)(3).
- Kaufman County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.1312(b)(3).
- Navarro County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.1772(b)(3).
- Nueces County courts at law do not have jurisdiction unless it is assigned under TEX. GOV'T CODE §§ 74.054 or 74.059. TEX. GOV'T CODE § 25.1802(d)(2).
- Reeves County courts at law do not have jurisdiction unless it is assigned under TEX. GOV'T CODE §§ 74.054 or 74.059. TEX. GOV'T CODE § 25.1972(b)(2).
- Rockwall County courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.2012(b)(3).
- Van Zandt courts at law are precluded from having jurisdiction. TEX. GOV'T CODE § 25.2362(b)(3).

In these counties, therefore, only the district courts have jurisdiction over misdemeanor official misconduct cases.

These explicit limitations on statutory-county-court authority may support the argument that county and district courts have concurrent jurisdiction. By stating that these courts have jurisdiction as provided by “TEX. GOV'T CODE § 25.0003 and other law” and/or concurrent jurisdiction with district courts and then excepting misdemeanor official misconduct cases, the Legislature is possibly acknowledging that both statutory county and district courts typically have such jurisdiction. *See,*

e.g., TEX. GOV'T CODE §§ 25.0212(a)-(b)(3) (Bowie),²² 25.1772(a)-(b)(3) (Navarro). Presumably, there would be no need to deprive these county courts of this class of cases if they were already excluded as a matter of general law. Importantly, a ruling of concurrent jurisdiction generally (or as far as it can go here) would not grant these courts jurisdiction that is already denied.

But these piecemeal exclusions may support the alternative view that district courts have exclusive jurisdiction. In granting some statutory county courts the breadth of jurisdiction given to district courts, it may have been necessary to exclude the misdemeanor official misconduct cases that accompany district-court jurisdiction. In other words, it is conceivable that the excepted courts were intended to address district-court jurisdiction because it was understood that county courts already lacked such jurisdiction. *See, e.g.*, TEX. GOV'T CODE § 54.746 (depriving El Paso County Courts at Law of “jurisdiction over misdemeanors involving official misconduct to any court, and all those cases remain in the original jurisdiction of the district courts

²² (a) In addition to the jurisdiction provided by Section 25.0003 and other law and except as limited by Subsection (b), a county court at law in Bowie County has, concurrent with the district court, the jurisdiction provided by the constitution and by general law for district courts.
(b) A county court at law does not have jurisdiction of:
(1) felony criminal matters:
...
(3) misdemeanors involving official misconduct;

as provided by law.”).

2. District Courts May Have Exclusive Jurisdiction Over Official Misconduct Misdemeanors.

There is an alternative reading of Article 4.05 that would support district courts having exclusive jurisdiction. Article 4.05 states: “District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, of *all* misdemeanors involving official misconduct” Does “all” mean every case such that those offenses can’t be litigated elsewhere? It very likely does, particularly in light of precedent holding that when, a specific subject matter is named, it has the effect of conferring exclusive jurisdiction over that subject. *Gallagher*, 690 S.W.2d at 594.

Though “all” in Article 4.05 (patterned after the pre-1985 Article V, § 8) may have been one of the first recognized examples of all-encompassing exclusive jurisdiction, it was not the last. In *Aguirre v. State*, this Court recognized that the SPA’s jurisdiction to represent the State “in all proceedings before the” Court of Criminal Appeals “literally gives the State Prosecuting Attorney authority to represent the State in every case before this Court.” 22 S.W.3d 463, 465 (Tex. Crim. App. 1999). And that authority over “all” cases positively excludes district and county attorneys from usurping the SPA’s jurisdiction. *Ex parte Taylor*, 36 S.W.3d

883, 884 (Tex. Crim. App. 2001) (per curiam).

Here, “all” can equally work to exclude county-court-at-law jurisdiction. So the “original jurisdiction” plus “all” equals exclusive jurisdiction. It makes sense to use “all” when discussing a type of offense that is not a statutory type (*e.g.*, offenses against persons) because there might be doubt otherwise. Additionally, it would be entirely logical to extend the named subject-matter exclusivity doctrine applied to the pre-1985 TEX. CONST. Art. V, § 8 to Article 4.05 because it is the mirror image of that former constitutional command. *Gallagher*, 690 S.W.2d at 594. That, in combination with the force of “all,” support the long held belief that only district courts have jurisdiction over misdemeanor official misconduct cases. This outcome is supported by *stare decisis*²³ and can be squared with some of the issues discussed earlier. Specifically,

- the Court could reaffirm that TEX. CODE CRIM. PROC. art. 4.07’s broad county-court jurisdiction excludes official misconduct misdemeanors, in keeping with *Hatch*, *Simpson*, and *Gallagher*. Indeed, the principle of legislative ratification should apply to Article 4.07 since the statute has retained the same subject

²³ It appears that, as recently as 2016, this Court unanimously persisted in adhering to this understanding, though admittedly there was no debate about concurrent jurisdiction. *State v. Drummond*, 501 S.W.3d 78, 83-84 (Tex. Crim. App. 2016) (“official oppression is a type of official misconduct offense for which district courts retain jurisdiction even when the offense alleged is a misdemeanor.”).

matter text since 1966 and was later amended to increase the monetary amount. Legislative ratification would counsel in favor of applying yesteryear's construction today. *State v. Colyandro*, 233 S.W.3d 870, 878 (Tex. Crim. App. 2007) (citing *Awadelkariem v. State*, 974 S.W.2d 721, 725 (Tex. Crim. App. 1998)) (“We presume the Legislature intends the same construction to continue to apply to a statute when the Legislature meets without overturning that construction.”).

- the Court could apply the *Hatch-Simpson-Gallagher* rationale to TEX. GOV'T CODE § 26.045(a)'s county court “exclusive original jurisdiction” qualification excepting “misdemeanors involving official misconduct.” “[O]ther than misdemeanors involving official misconduct” may be said to exclude both exclusive and original jurisdiction for those offenses since original jurisdiction is not a category of jurisdiction named in § 26.045(a). Thus, original jurisdiction should not be implied as a contrast to the specified exclusive jurisdiction. *See Boykin*, 818 S.W.2d at 785 (courts cannot add to a statute's text).

- there would be no conflict with the immediate removal provision, which requires a court rendering a judgment of conviction in an official misconduct case involving a county officer to also include an order of removal in the judgment. TEX. LOC. GOV'T CODE § 87.031(a), (b). And, as a result, there would be no concern about the possible needless waste of additional resources for removal of county officers in a separate civil proceeding.
- this construction is consistent with the view that jurisdiction was vested in the district court because of the seriousness of an official misconduct charge and the consequence of immediate removal for county officers. *Gallagher*, 690 S.W.2d at 591; *Emerson*, 727 S.W.2d at 270 (Clinton, J., dissenting). Additionally, the status of persons charged with these offenses is also important. Such persons include those who are elected. A court's ability to override a majority vote, even if clearly just, is a powerful responsibility. *See, e.g.*, TEX. LOC. GOV'T CODE § 87.031(a), (b); TEX. CONST. Art. XV, § 6 (Supreme Court original jurisdiction for removal of district-court judges).²⁴

²⁴ Removal of appellate judges can be effectuated by the Governor on address of a two-thirds vote by the Texas House and Senate. TEX. CONST. Art. XV, § 8.

- as noted in the preceding section, this construction could explain the specific statutory-county-court jurisdiction scheme that denies misdemeanor-official-misconduct jurisdiction when their jurisdiction is otherwise broadened.

a. A Nullity Conclusion Gives and Takes Away in This Case.

If the district-court-only construction is solidified once and for all, Appellant cannot be retried in district court. Although jeopardy²⁵ would not preclude a retrial, the two-year statute of limitations²⁶ was not tolled because the county court at law was not a court of “competent jurisdiction.” *See State v. Hall*, 829 S.W.2d 184, 188 (Tex. Crim. App. 1992) (a charging instrument filed in a court without subject matter jurisdiction does not toll).

²⁵ *See Hoang v. State*, 872 S.W.2d 694, 699 (Tex. Crim. App. 1993) (“Because our law is settled that judgments of conviction in courts without jurisdiction of the defendant are an absolute nullity from their inception, we hold that such judgments do not bar successive prosecution under State or federal principles of double jeopardy.”).

²⁶ TEX. CODE CRIM. PROC. art. 12.02(a) (“An indictment or information for any Class A or Class B misdemeanor may be presented within two years from the date of the commission of the offense.”). Appellant committed the offenses in 2013. 1 CR 11.

PRAYER FOR RELIEF

For the benefit of the bench and bar statewide, the SPA prays that the Court of Criminal Appeals resolve the conflict over whether district courts have exclusive jurisdiction of misdemeanor official misconduct cases.

Respectfully submitted,

/s/ Stacey M. Soule
State Prosecuting Attorney
Bar I.D. No. 24031632

P.O. Box 13046
Austin, Texas 78711
information@spa.texas.gov
512-463-1660 (Telephone)
512-463-5724 (Fax)

CERTIFICATE OF COMPLIANCE

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/s/ Stacey M. Soule
State Prosecuting Attorney

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The undersigned certifies that a copy of the State's Brief has been served on
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Hon. Baldwin Chin
Baldwin.chin@fortbendcountytexas.gov

Hon. Patrick F. McCann
writlawyer@justice.com

/s/ Stacey M. Soule
State Prosecuting Attorney

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information@spa.texas.gov
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Baldwin Chin		Baldwin.chin@fortbendcountytexas.gov	5/18/2021 1:48:43 PM	SENT
Patrick F.McCann		writlawyer@justice.com	5/18/2021 1:48:43 PM	ERROR